

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: ADAM LEVINSON,)
JAMES SCHMIDT, and) OEIG Case: 11-00391
MIDWEST FOODS)

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report's factual allegations or legal conclusions before the Commission.

The Commission received a final report from the Governor's Office of Executive Inspector General ("OEIG") and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor's Executive Inspector General and to Adam Levinson, James Schmidt and Midwest Foods at their last known addresses.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. ALLEGATIONS AND SUMMARY

In April 2011, the Office of Executive Inspector General (OEIG) received a complaint regarding employees of the Department of Intercollegiate Athletics (Athletics Department) of the University of Illinois at Chicago (UIC or University). The complaint alleged that Athletics Department employees offered Midwest Foods an exclusive agreement to provide produce to UIC in exchange for a \$50,000 sponsorship.

The OEIG's investigation revealed that the Athletics Department entered into contracts with Midwest Foods and other vendors that were not processed in accordance with UIC policy. The OEIG finds that former Associate Athletic Director Adam Levinson, and the Director of

Intercollegiate Athletics, James Schmidt, failed to ensure that contracts were processed in accordance with UIC policy.

The OEIG's investigation also revealed that Mr. Levinson received gifts from Midwest Foods in violation of the State Officials and Employees Ethics Act (Ethics Act).

The OEIG's investigation further revealed that Midwest Foods, by and through its co-owner John Fitzgerald, violated the Ethics Act by intentionally offering and making gifts to Mr. Levinson, among other UIC employees.

Mr. Levinson is no longer a UIC employee, and so we recommend that a copy of this report be placed in his personnel file. The OEIG recommends that Mr. Schmidt be counseled. The OEIG further recommends that UIC issue a reminder to all of its employees to review and adhere to the Ethics Act Gift Ban.

II. BACKGROUND

A. Athletics Department's Sponsorship Agreements

To raise money to fund its athletics programs, the Athletics Department solicits "sponsorship agreements" in which vendors pay money to the University in exchange for certain benefits and commercial opportunities. During the time covered by this investigation, sponsorship agreements were solicited and negotiated by former Associate Athletic Director Adam Levinson.

B. Midwest Foods

Midwest Foods is an independent wholesale produce distributor and is co-owned by John Fitzgerald. In the fall of 2011, Adam Levinson, on behalf of the Athletics Department, negotiated a sponsorship agreement with Midwest Foods (Midwest Agreement).

C. Business and Financial Policies and Procedures

Section 5.12 of the Business and Financial Policies and Procedures (Business Manual), entitled "Revenue Generating Activities," establishes certain requirements for executing all revenue generating agreements valued at more than \$5,000:

- Agreements must be reviewed and approved by the Office of Business Development Services (Development Office);
- The agreement then must be routed for signature by the University Comptroller (or delegate);
- The agreement must be attested to by the Secretary of the Board of Trustees (or delegate); and
- The agreement must be signed by the other party/parties.

Section 5.12 of the Business Manual further states that:

“Only the University Comptroller and the Secretary of the Board of Trustees, or their approved delegates have the authority to sign agreements and contracts that obligate the University. A fully executed agreement is required *before* services are performed.” (emphasis added).

If the contract does not follow the “standard template” - *i.e.*, standard terms that have been pre-approved by UIC - the agreement also must be reviewed and approved by University Counsel. *Id.*

III. INVESTIGATION

As part of its investigation, the OEIG reviewed whether: (a) sponsorship agreements were entered into appropriately and consistent with UIC policy; and (b) Mr. Levinson and Mr. Fitzgerald violated the Ethics Act Gift Ban.

A. Sponsorship Agreements Entered Into by the Athletics Department

OEIG investigators examined: (1) the circumstances under which the Midwest Agreement was entered into; (2) the manner in which other sponsorship agreements were processed; and (3) the roles of Mr. Levinson and Mr. Schmidt in relation to those agreements.

1. The Midwest Agreement

The Midwest Agreement was based on the standard template for sponsorship agreements, but it deviated, in part, from the standard terms. One of the deviations was that the Agreement stated, “Midwest Foods will be the exclusive authorized vendor for produce ‘Fruits and Vegetables’ at UIC during the term of the contract.” Despite the deviation from the standard template, the Midwest Agreement was not sent to University Counsel for review. Nor was the agreement executed by the Comptroller until October 2011, about ten months after the start date of the agreement.

2. Other Sponsorship Agreements

In light of the fact that the Midwest Agreement was not processed in compliance with UIC policy, OEIG investigators examined whether other sponsorship agreements were properly processed. A review of sponsorship agreements between 2007 and 2011 revealed that 83 of 112 sponsorship agreements were not received by the Development Office for review and approval until after the start date listed in the contract. Thus, these contracts were not fully executed until *after* the contract began.

3. Former Associate Athletic Director Adam Levinson

In April and May 2012, investigators conducted telephonic interviews of Adam Levinson. Mr. Levinson told investigators that, as Associate Athletic Director, he was responsible for negotiating and drafting sponsorship agreements.

Mr. Levinson acknowledged that he negotiated the Midwest Agreement on behalf of the Athletics Department. He further acknowledged that he did not have the authority to modify the agreement to provide that Midwest Foods would be the exclusive provider of produce at UIC. Mr. Levinson said that he added the additional (exclusivity) language at the request of Midwest Foods. He stated that it was a common practice for the standard template of the sponsorship agreement to be modified without sending it to University Counsel as a non-standard agreement.

With respect to the Athletics Department's processing of sponsorship agreements generally, Mr. Levinson stated that he did not have the authority to execute contracts, but that Director Schmidt and others were responsible for signing contracts. Mr. Levinson said that it was common knowledge that a sponsorship agreement was considered "official" when a vendor signed the agreement, and that any other signatures were considered a "formality." According to Mr. Levinson, he believed that is why many of the sponsorship agreements were not being processed pursuant to UIC policies and procedures.

4. Director James Schmidt

On July 20, 2011, January 31, 2012,¹ and May 31, 2012, OEIG investigators interviewed James Schmidt, UIC's Director of the Department of Intercollegiate Athletics. Mr. Schmidt said that, in late 2007/2008, the Development Office was created. According to Mr. Schmidt, the sole responsibility of the Development Office was to process and approve all revenue generating contracts, many of which were contained in a standard-template form that had been pre-approved by UIC's legal department. Mr. Schmidt stated that sometime in 2008, he spoke with the Development Office, which informed him that all revenue generating contracts had to be processed and approved by the Development Office before being considered fully executed and valid.

Mr. Schmidt stated that prior to 2008, he believed that a revenue generating contract was considered fully executed and valid when it had the vendor's signature, and the Athletic Director's and the Vice Chancellor's signatures. Mr. Schmidt acknowledged that in 2009, the Athletics Department was not submitting contracts to the Development Office for approval.

Mr. Schmidt said that in 2010 it was discovered that 10 or 12 contracts under Mr. Levinson's "review" had not been processed according to policy. He said that he then directed that the Development Office be notified, which then processed and approved the contracts, even though most, if not all, of the contracts would have approval dates later than the start dates of the contracts. Mr. Schmidt said that was "a serious gaffe in the sponsorship department." He said that, as a result, he directed that the life cycle of all rental agreements be tracked, although he said it was not until 2011 that he directed that sponsorship agreements be tracked. (It should be noted that, in 2011, the Development Office received 20 sponsorship agreements from the Athletics Department after the start dates of the contracts).

¹ At the January 31, 2012, interview, Mr. Schmidt was interviewed for background information and was not provided his administrative rights. Accordingly, none of his statements from the January 31, 2012 interview are used in making any finding against Mr. Schmidt.

Mr. Schmidt said that he did not review each contract before signing it. He said that he trusts his staff and signs off on the contracts when they are presented to him. He said that he trusted his staff to alert him if there were changes to the standard contract.

Mr. Schmidt stated that, as of the date of the interview, everyone in the Athletics Department who handles revenue generating contracts knows that a contract is not fully executed until it has been signed by the Comptroller.

B. Gifts Accepted by Adam Levinson, among Other UIC Employees, from a Principal of Midwest Foods

The OEIG investigated whether Mr. Levinson, among other UIC employees, accepted gifts in the form of sporting event tickets and free use of a rental apartment from a principal of Midwest Foods.

1. Sporting Event Tickets

With regard to sporting event tickets, investigators interviewed John Fitzgerald, the co-owner of Midwest Foods, interviewed Mr. Levinson, and conducted a follow-up investigation.

a. Interview of John Fitzgerald

Investigators interviewed John Fitzgerald on May 29, 2012. Mr. Fitzgerald said that he negotiated the Midwest Agreement on behalf of Midwest Foods. Mr. Fitzgerald said he thought that, by being a sponsor, he could increase the exposure of his products and potentially begin selling them throughout UIC's campus.

Mr. Fitzgerald said that in about August 2011, he gave Mr. Levinson and another UIC employee tickets to a Chicago White Sox/New York Yankees game. Mr. Fitzgerald said that Mr. Levinson went to the game with a UIC baseball coach, whose name he could not recall.

Mr. Fitzgerald also said that he gave Mr. Levinson, along with three other UIC employees whom he could not identify, tickets to a Chicago Bulls game in March or April 2011.

b. Interview of Mr. Levinson

During his May 31, 2012 OEIG interview, Adam Levinson acknowledged that he and other UIC employees received tickets from Mr. Fitzgerald to attend a Chicago White Sox game in July or August 2011. Mr. Levinson also acknowledged that he received tickets to a Chicago Bulls game from Mr. Fitzgerald in either March or April of 2011.

c. Follow-up investigation regarding sporting event tickets

OEIG Investigators contacted the White Sox organization. Records revealed that Midwest Foods was a sponsor of the White Sox and, based on that sponsorship, was provided an

allowance to purchase tickets. Based on the White Sox's records of ticket purchases, an individual ticket for the relevant time period had a value of between \$57 and \$72.

The OEIG also subsequently identified an Athletics Department employee who confirmed going to a Chicago Bulls game with Mr. Fitzgerald and Mr. Levinson. Based on the employee statements and information provided by the Chicago Bulls, the individual ticket prices varied between \$120 and \$160.

2. Adam Levinson's Use of a California Rental Apartment Free of Charge

Mr. Fitzgerald told investigators that sometime prior to January 2011 he offered Mr. Levinson the use of a rental apartment that he and his wife own in Santa Monica, CA. Mr. Fitzgerald stated that the rental price was approximately \$800 per month.² Mr. Fitzgerald said that Mr. Levinson used the apartment from January 14 to 17, 2011 free of charge.

Investigators also discovered a November 30, 2010 email from Mr. Levinson to Mr. Fitzgerald that stated, "I just booked my LA trip from Jan. 14-17.it [sic] would be fantastic if I could stay at your place out there. I promise to take good care of it."

On April 19, 2012, Mr. Levinson told investigators that he took a trip to California from January 14 through January 17, 2011, but said he stayed at his "best friend, Dan's place."³ Investigators then directed Mr. Levinson's attention to the email exchange in which he asked Mr. Fitzgerald about staying at Mr. Fitzgerald's California apartment. In response, Mr. Levinson said he and his friend Dan used the apartment a couple of times during the day and that he only stored his luggage there. Mr. Levinson also stated that he never spent the night there but told Mr. Fitzgerald he did so in order not to insult Mr. Fitzgerald.

Later on the same day of his interview, Mr. Levinson contacted investigators and said his initial recollection of not having stayed at Mr. Fitzgerald's apartment was incorrect. Mr. Levinson said that he did use Mr. Fitzgerald's apartment from January 14 through January 17, 2011 free of charge.

IV. ANALYSIS

The OEIG concludes that: (a) Mr. Levinson violated UIC policy regarding the approval and execution of revenue generating agreements; (b) Mr. Schmidt violated UIC policy regarding the approval and execution of revenue generating agreements; (c) Mr. Levinson violated the Ethics Act Gift Ban; and (d) Mr. Fitzgerald violated the Ethics Act Gift Ban.

² Investigators contacted numerous hotels in proximity to Mr. Fitzgerald's apartment and discovered that hotel rates during the time period that Mr. Levinson used Mr. Fitzgerald's apartment ranged from \$255 to \$995 per night.

³ Mr. Levinson refused to provide any contact information for "Dan" other than Dan's last name.

A. Mr. Levinson Violated UIC Policy Regarding the Processing of Revenue Generating Agreements

Section 5.12 of UIC's Business Manual provides that if a "standard template" contract is changed, the agreement is considered "non-standard" and it is subject to review by University Counsel. The Manual also provides that all revenue generating agreements must be approved by the Development Office and fully executed before they become operative. Mr. Levinson violated UIC policy in both respects.

First, with regard to the Midwest Agreement, Mr. Levinson negotiated and facilitated the inclusion of non-standard language into the contract providing that Midwest would be the "exclusive provider" of produce for UIC, and then failed to have that non-standard language reviewed by University Counsel.

Second, with respect to the Midwest Agreement in particular, and other sponsorship agreements generally, Mr. Levinson failed to ensure that they were sent to the Development Office for approval (and subsequent execution) prior to the start date of the contracts. Mr. Levinson admitted that sponsorship agreements were not being properly processed pursuant to the UIC policy requiring approval and signatures before the contract started. Accordingly, the allegation that Mr. Levinson failed to follow UIC policy requiring that revenue generating agreements be properly reviewed and executed before services were provided is **FOUNDED**.

B. Mr. Schmidt Violated UIC Policy Regarding the Processing of Revenue Generating Agreements

As noted above, Section 5.12 of the UIC Business Manual requires employees to ensure that a fully executed revenue generating agreement between the University and the client exists **before** providing any services. Based on a review of sponsorship agreements provided by the Athletics Department between the calendar years of 2007 through 2011, approximately 83 of 112 contracts were not received by the Development Office nor were proper signatures obtained prior to the start of the contracts.

Mr. Schmidt acknowledged that in 2009, 2010 and 2011, after the Development Office had been created and had advised him of the required procedures for the approval and execution of revenue generating agreements, contracts were not being processed in accordance with UIC policy. As Director of the Athletics Department, Mr. Schmidt was responsible for ensuring that Mr. Levinson and others were complying with UIC policy. In particular, after 2010, when he became aware that numerous contracts had not been sent to the Development Office for approval and prior to their start dates, and after he implemented a process to monitor the proper processing of revenue generating agreements (tracking their life cycles), it was incumbent upon him to ensure that proper procedure was being followed. He failed to do so.

The OEIG concludes the allegation that Mr. Schmidt failed to follow UIC policy requiring that revenue generating agreements be approved and executed before services being performed is **FOUNDED**.

C. Mr. Levinson Violated the Ethics Act Gift Ban Provision

Section 10-10 of the Ethics Act prohibits a State employee from intentionally soliciting or accepting “any gift from any prohibited source[.]” 5 ILCS 430/10-10. A “prohibited source” includes any person or entity that does business or seeks to do business with a State Agency. 5 ILCS 430/1-5. “Gift” includes entertainment and hospitality. 5 ILCS 430/1-5. However, the restriction does not apply to any item or items having a cumulative value over a calendar year of less than \$100. 5 ILCS 430/10-15(12).

OEIG finds that Midwest Foods is a “prohibited source” because it does business, and seeks to do business, with UIC.

The OEIG also finds that Mr. Levinson solicited and accepted gifts from Midwest Foods via its co-owner Mr. Fitzgerald. Mr. Levinson first solicited a gift from Mr. Fitzgerald on November 30, 2010 when he asked to use Mr. Fitzgerald’s apartment in California. He then accepted the gift by in fact using the apartment in January 2011. In light of the fact that hotel accommodations near Mr. Fitzgerald’s apartment ranged from \$255 to \$995 per night, Mr. Levinson’s use of the apartment for approximately 3 nights is reasonably valued at between \$765 and \$2,985.

In March and August 2011, Mr. Levinson accepted gifts from Mr. Fitzgerald by accepting tickets to Chicago Bulls and White Sox sporting events. The value of the White Sox ticket used by Mr. Levinson is between approximately \$57 and \$72 and the value of the Chicago Bulls ticket is between approximately \$120 and \$160. Therefore, the cumulative value of all of these gifts exceeded \$100 for the 2011 calendar year. See 5 ILCS 430/10-15(12).

Accordingly, the allegation that Mr. Levinson solicited and accepted gifts from a prohibited source in violation of the Ethics Act is **FOUNDED**.⁴

D. Midwest Foods Violated the Ethics Act Gift Ban Provision

Section 10-10 of the Ethics Act also bars a “prohibited source” from “intentionally offer[ing] or mak[ing] a gift that violates this Section.” 5 ILCS 430/10-10. Mr. Fitzgerald, as co-owner of Midwest Foods, is a “prohibited source” because his company does business and seeks to do business with UIC. See 5 ILCS 430/1-5.

Mr. Fitzgerald told the OEIG that sometime prior to January 2011, he offered Mr. Levinson the use of a rental apartment that he and his wife own in Santa Monica, CA, and that Mr. Levinson in fact used the apartment from January 14 to 17, 2011 free of charge.

⁴ The OEIG further notes that Mr. Levinson’s solicitation and acceptance of gifts also violated UIC policy entitled, “Restrictions on Gifts to Employees,” the language of which mirrors the Ethics Act Gift Ban. See Section 9.8 of the UIC Business Manual. In addition, the policy states, “Employees of the University should avoid accepting any kind of gratuities, tips or gifts.”

Mr. Fitzgerald stated that in August 2011 he gave Mr. Levinson and another UIC employee tickets to a Chicago White Sox/New York Yankees game, and that in March or April 2011, he gave Mr. Levinson, and three other UIC employees, tickets to a Chicago Bulls game. As stated above, the cumulative value of all these gifts exceeded \$100 for the 2011 calendar year. See 5 ILCS 430/10-15(12).

Accordingly, the allegation that Midwest Foods, by and through its co-owner John Fitzgerald, violated the Ethics Act by intentionally offering and making gifts to Mr. Levinson, among other UIC employees, is **FOUNDED**.

V. CONCLUSIONS AND RECOMMENDATIONS

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – Adam Levinson violated UIC policies when he failed to ensure that the Midwest Sponsorship Agreement and other sponsorship agreements were properly reviewed and executed prior to the start date of the contract.
- **FOUNDED** – James Schmidt violated UIC policies by failing to ensure that sponsorship agreements were properly reviewed and executed prior to the start dates of the contracts.
- **FOUNDED** – Adam Levinson intentionally solicited and accepted gifts from a prohibited source in violation of the Ethics Act.
- **FOUNDED** – Midwest Foods, by and through its co-owner John Fitzgerald, violated the Ethics Act by intentionally offering and making gifts to Mr. Levinson, among other UIC employees.

Adam Levinson is no longer a UIC employee and thus the OEIG recommends that UIC place a copy of this Report in his employment file. Though the OEIG finds that Mr. Levinson and Midwest Foods violated the Ethics Act, after due consideration, the OEIG has determined not to refer the matter at this time to the Illinois Attorney General's Office for potential prosecution before the Executive Ethics Commission.

In light of James Schmidt's failure to follow University policy, the OEIG recommends that Mr. Schmidt be counseled.

In light of the information obtained during this investigation, the OEIG recommends that UIC issue a reminder to all of its employees to review and adhere to the Ethics Act Gift Ban.

No further investigative action is needed and this case is considered closed.

Date: December 31, 2012

Office of Executive Inspector General
for the Agencies of the Illinois Governor
32 W. Randolph Street, Ste. 1900
Chicago, IL 60601

By: **Susan Haling**
Special Counsel

Brandon Myers
Supervising Investigator



OFFICE OF EXECUTIVE INSPECTOR GENERAL
FOR THE AGENCIES OF THE ILLINOIS GOVERNOR

32 WEST RANDOLPH STREET, SUITE 1900
CHICAGO, ILLINOIS 60601
(312) 814-5600

RICARDO MEZA
EXECUTIVE INSPECTOR GENERAL

OEIG RESPONSE FORM

Case Number:
11-00391

Return By:
20 Days of Receipt of Report

Please check the box that applies.

- ☒ We have implemented all of the OEIG recommendations.
(Provide details regarding action taken.)

In regards to the recommendation that UIC place a copy of the report in Adam Levinson's Personnel file, this was completed on January 16, 2013. Additionally, a reminder was distributed to all employees on January 16, 2013 regarding their requirement to adhere to the *Ethics Act* Gift Ban, as per the recommendation in the report. Documentation of this correspondence is attached for your reference. The final recommendation that Jim Schmidt be counseled was addressed via an individual meeting on January 15, 2013 and again on January 17, 2013 via telephone.

- ☐ We will implement all of the OEIG recommendations but will require additional time.
We will report to OEIG within 30 days from the original return date.
(Provide details regarding action planned / taken.)

(over)

- ☐ We are implementing one or more of the OEIG recommendations, however, we plan to depart from other OEIG recommendations.

(Provide details regarding action planned / taken and any alternate plan(s).)

- ☐ We do not wish to implement any of the OEIG recommendations.
(Explain in detail why and provide details of any alternate plan(s).)

Signature

Donna S. McNeely

Print Name

University of Illinois Ethics Officer
Print Agency and Job Title

January 17, 2013

Date

McNeely, Donna S

From: Staff Official Announcements <OFFICIAL_STAFF@LISTSERV.UIC.EDU> on behalf of Official Announcement <official_owner@uic.edu>
Sent: Wednesday, January 16, 2013 5:13 PM
To: OFFICIAL_STAFF@LISTSERV.UIC.EDU
Subject: [OFFICIAL] Ethics Act Gift Ban

UIC Colleagues,

The State Officials and Employees Ethics Act bans the solicitation and acceptance of gifts from prohibited sources to University employees, as well as an employee's spouse and immediate family members. A gift is defined by the Act as any gratuity, discount, entertainment, hospitality, loan, forbearance, or other tangible or intangible item having monetary value. This includes cash, food and drink, and honoraria for speaking engagements related to the employee's position at the University. A prohibited source is defined by the Act as any person or entity who conducts business with, seeks to do business with, has interests that may be substantially affected by, or seeks to obtain some official action from the University or an employee of the University. Some exceptions are allowed by the Act.

Additional information regarding the Act is available at several sources, below:

Office of Business & Financial Services (OBFS) Policies & Procedures Section 9.8-Restrictions on Gifts to Employees
<http://www.obfs.uillinois.edu/cms/one.aspx?portalId=909965&pageId=913598>

Office of Human Resources Policies & Procedures # 310-Gifts & Gratuities
http://www.uic.edu/depts/hr/relations/PolicyDocs/HRPP%200300/310_062507.pdf

University Ethics Office Policies & Legislation http://www.ethics.uillinois.edu/policies_and_legislation/

The University Ethics Office is responsible for the interpretation of the Ethics Act. Questions related to the acceptance of gifts should be directed to the Ethics Office by using the toll-free help line, 866-758-2146, or by e-mail, ethicsofficer@uillinois.edu.

Paula Allen-Meares
Chancellor